

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LARRY ARNETT, RONDA ARNETT,
ALICE A. BERGER, LEE M. BERGER,
SUSAN LASS, MARK LEMMER, PAMELA
LEMMER, KARYL RESNICK, ERIC
SKANSGAARD, DONNA M. WADE, and
EDWARD M. WALLACE, JR., individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A. in its own
capacity and as successor by merger to BAC
HOME LOANS SERVICING, L.P.,

Defendant.

Case No. 3:11-CV-01372-SI

**NOTICE OF CLASS ACTION
SETTLEMENT**

**THIS IS A NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT.**

This is an important notice from the United States District Court for the District of Oregon regarding a proposed class action settlement and upcoming hearing in the above-referenced class action lawsuit that may affect your rights. This notice is being sent to you because you have been identified as a class member in this lawsuit. **A Claim Form is enclosed with this notice. You must return this Claim Form by INSERT DATE if you wish to receive certain monetary relief under this settlement and are eligible for such relief, as explained further below on pages 3-5 of this notice.**

I. BACKGROUND AND SUMMARY OF LITIGATION

This class action lawsuit alleges that Defendant Bank of America, N.A., in its own capacity and as successor by merger to BAC Home Loans Servicing, L.P. (“BANA” or “Defendant”) violated the legal rights of its customers by requiring them to purchase excessive amounts of flood insurance coverage and by arranging for improper kickbacks for itself and/or its affiliates (including in the form of commissions) in connection with force-placed flood insurance. BANA denies that it has done anything unlawful, but has agreed to enter into a settlement agreement to resolve these allegations. By agreeing to this settlement, BANA does not admit any wrongdoing, and its agreement shall not constitute an admission of liability by BANA.

The Court has certified the following class for settlement purposes:

All persons who were sent a flood insurance cycle letter by BANA, Countrywide Home Loans, Inc., or Countrywide Home Loans Servicing, LP or who were charged for lender-placed flood insurance by BANA, Countrywide Home Loans,

Inc., or Countrywide Home Loans Servicing, LP on or after January 1, 2007 and before April 4, 2014 in connection with a residential mortgage loan, home equity line of credit, reverse mortgage loan, or loan secured by shares in a cooperative housing association.

II. SUMMARY OF THE PROPOSED SETTLEMENT TERMS

The Court certified the Settlement Class and preliminarily approved the settlement on [INSERT, 2014]. The Settlement Agreement provides for the following relief:

A. Prospective Relief (meaning changes BANA agrees to make to its flood insurance policies and practices)

1. Commissions. For three (3) years from the Effective Date of the Settlement Agreement, neither BANA nor its affiliates shall receive any commission payments in connection with BANA's placement of force-placed flood insurance on any property securing a residential mortgage loan, home equity line of credit, reverse mortgage loan, or security instrument secured by shares in a cooperative housing association within BANA's servicing portfolio.

2. Right to Request Flood Coverage Opt-Out Form. For three (3) years from the Effective Date of the Settlement Agreement, BANA shall provide a Flood Coverage Opt-Out Form to any member of the Settlement Class who requests a Flood Coverage Opt-Out Form, provided that the Settlement Class Member's unpaid principal balance ("UPB") on their mortgage loan, line of credit under their home equity line of credit, or principal limit on their reverse mortgage loan is less than \$250,000, and subject to the limitation that BANA is not obligated to accept the Flood Coverage Opt-Out Form if the Flood Coverage Opt-Out Form is returned to BANA more than 35 days after the date on the Flood Coverage Opt-Out Form.

3. Flood Coverage Opt-Out Form Provided with All "Gap" Cycle Letters. For three (3) years from the Effective Date of the Settlement Agreement, BANA shall enclose a Flood Coverage Opt-Out Form with each "gap" cycle letter requesting additional flood insurance coverage.

4. Nature and Effect of Flood Coverage Opt-Out Form. The Flood Coverage Opt-Out Form shall provide each Settlement Class Member who receives the Form with an opportunity to elect to maintain flood insurance coverage in the amount of the Settlement Class Member's UPB/line of credit amount/principal limit, where the Settlement Class Member's UPB/line of credit/principal limit is less than \$250,000. Consistent with its current practice, BANA shall honor the Settlement Class Member's election for at least until the expiration of the Settlement Class Member's flood insurance policy term. In the event the Settlement Class Member's lender-placed flood insurance policy is renewed, BANA shall provide the Settlement Class Member with a Flood Coverage Opt-Out Form with respect to the renewal policy. If the Flood Coverage Opt-Out Form is completed and returned within 35 days from the date on the Flood Coverage Opt-Out Form, BANA shall cancel any portion of the existing lender-placed flood insurance coverage in excess of UPB/line of credit amount/principal limit and shall completely refund any charges associated with such coverage, and, if necessary, issue a substitute policy at the UPB/line of credit amount/principal limit.

5. Effect of Change to UPB Standard. In the event that BANA changes its flood insurance coverage requirement to the lesser of UPB, replacement cost value, or \$250,000, any obligation that BANA has under the Settlement Agreement to provide borrowers with a Flood Coverage Opt-Out Form is extinguished.

6. No Flood Coverage Requirement for Co-Op Borrowers Unless Required by Mortgage. BANA shall not knowingly require Settlement Class Members with loans or lines of credit secured by shares in housing cooperatives (“Co-Op Borrowers”) to maintain flood insurance coverage where flood insurance is not required by their security instrument, and shall fully refund Co-Op Borrowers for any force-placed flood insurance coverage that was not required by their security instrument to the extent that BANA becomes aware of such coverage.

The foregoing prospective relief shall be subject to changes in applicable law or changes in investor or insurer requirements which would prevent BANA from implementing such prospective relief. Should any provision of the foregoing prospective relief conflict or be inconsistent with any existing or subsequently adopted state or federal statute, regulation, rule, order, or regulatory directive, or any existing or subsequently adopted agency or investor rule or requirement, such statute, regulation, rule, order, regulatory directive, or requirement shall control..

B. Monetary Relief to Settlement Class Members and Distribution Formula

Pursuant to the Settlement Agreement, BANA has agreed to establish a non-reversionary Gross Settlement Fund of Thirty-One Million Dollars (\$31,000,000.00). The following amounts will be deducted from the Gross Settlement Fund: any amounts approved by the Court for (a) service awards to Plaintiffs Larry Arnett, Ronda Arnett, Alice A. Berger, Lee M. Berger, Susan Lass, Mark Lemmer, Pamela Lemmer, Karyl Resnick, Eric Skansgaard, Donna M. Wade, and Edward M. Wallace, Jr., plus Darrell A. Purifoy, Lynda C. Purifoy and Herta S. Theberge (though only one service award per household), for their efforts in bringing and prosecuting this litigation, not to exceed \$2,500 each; (b) attorneys’ fees to Class Counsel (not to exceed thirty percent (30%) of the Gross Settlement Fund); (c) Class Counsel’s expenses that are approved by the Court; and (d) the fees and costs of the Claims Administrator. The Court has not yet decided whether to award some or all of these amounts, but to the extent that any amounts are awarded, they will be deducted from the Gross Settlement Fund and the remainder will constitute the Net Settlement Fund that will be available to provide monetary relief to Settlement Class Members who do not timely opt out of the Settlement (“Eligible Class Members”), and who have claims that are eligible for monetary relief under the Settlement Agreement as set forth below. Class Counsel will file a Motion for Attorneys’ Fees and Expenses at least 30 days prior to the deadline for submitting opt-out requests, as described below.

The Net Settlement Fund shall be distributed to Eligible Class Members *pro rata* based on each Eligible Class Member’s “Settlement Shares.” Each Eligible Class Member’s Settlement Shares shall be calculated as described in subparagraphs (i), (ii), and/or (iii) below. Eligible Class Members may receive Settlement Shares under more than one subparagraph below and for each force-placement of flood insurance within the Class Period (January 1, 2007 to April 4, 2014). Due to the *pro rata* distribution of the Net Settlement Fund to Settlement Class Members, “Settlement Shares” are not equal to actual dollars, and the amount each Class Member will receive from the Net Settlement Fund will not be known until after all Claim Forms have been returned and compiled.

- i. Settlement Class Members who were force-placed with flood insurance during the Class Period by BANA shall receive Settlement Shares equal to 12% of their net force-placed flood insurance premiums charged by BANA during the Class Period;
- ii. Settlement Class Members who timely return the enclosed Claim Form postmarked or otherwise returned on or before [INSERT DATE], stating that, for any particular year during the Class Period, they were required by BANA to purchase flood insurance in

excess of their UPB/line of credit amount/principal limit (either excess LPFI or excess private insurance or both), and that they did not want such coverage, shall receive Settlement Shares equal to the average amount that a Settlement Class Member would have paid for the average coverage amount of BANA's "gap" policies by purchasing insurance through the National Flood Insurance Program, as determined by Plaintiffs' Damages Expert, for each year in which excess coverage is claimed; and

- iii. Settlement Class Members who are identified by BANA as Co-Op Borrowers and who timely return the enclosed Claim Form postmarked or otherwise returned on or before **[INSERT DATE]**, stating that they were required by BANA to purchase private flood insurance in excess of their UPB/line of credit amount/principal limit (and did purchase such insurance) shall receive a Settlement Share equal to the amount that a Settlement Class Member would have paid for the average class flood insurance coverage amount by purchasing insurance through the National Flood Insurance Program, as determined by Plaintiffs' Damages Expert.

You do not need to submit a Claim Form to be entitled to monetary relief under Paragraph (i) above. However, you must fill out and return the enclosed Claim Form by **[INSERT DATE] if you believe that you qualify for additional monetary relief pursuant to paragraphs (ii) or (iii) above.** You can submit your completed and signed Claim Form in any of the following ways:

- **Mail to:** **[INSERT CLAIMS ADMINISTRATOR ADDRESS]**
- **Fax to:** **XXX-XXX-XXXX**
- **Email to:** **xxxxxxxxx.com**
- **Online via:** **www.xxxxxxxxxxxxxxxxxx.com**

A Claim Form is enclosed with this notice. In addition, copies of the Claim Form can also be obtained on the settlement website at **[INSERT WEBSITE ADDRESS]**.

Within 10 business days after the Court's Final Approval Order, Plaintiffs' Damages Expert shall calculate the total Settlement Shares for all Eligible Class Members based on the loan-level data that has been produced by BANA in this litigation and any Claim Forms that are returned, and shall determine the amount owed to each Eligible Class Member based upon their *pro rata* share of the Net Settlement Fund.

Eligible Class Members who have previously made or who make an insurance coverage claim in the future on any force-placed flood insurance policy will not be affected in any way as a result of their participation in this Settlement, and may participate in this Settlement to the same extent as Eligible Class Members who have not made an insurance coverage claim on their force-placed flood insurance policy.

Eligible Class Members shall be paid by check, unless they have an active escrow account and an active mortgage loan or home equity line of credit serviced by BANA, in which case they may be paid via escrow credit by BANA, at BANA's election. With respect to such Eligible Class Members, by 45 days after the Effective Date of the Settlement, BANA shall credit such escrow accounts with escrow credits equal to the Settlement Payment to which the Eligible Class Members are entitled under the Settlement Agreement. Within an additional 30 days, the Claims Administrator shall distribute all settlement payments to those Eligible Class Members who are to be paid by check.

Eligible Class Members who are issued their settlement payments by check will have 180 days

from the date of distribution of their payments to cash their check. Eligible Class Members may request new checks to be issued by the Claims Administrator during this time period, if they lose or misplace their original check; however, the time period for cashing the check will be the same as the original time period set forth above.

Within 10 days after the conclusion of the time period for Eligible Class Members to cash their checks, the Claims Administrator shall determine the amount of money remaining in the Qualified Settlement Fund as the result of voided or undeliverable checks. If there is \$750,000 or more remaining in the Qualified Settlement Fund as a result of voided or undeliverable checks, such funds will be redistributed on a *pro rata* basis to Eligible Class Members who received escrow credits or negotiated their checks (minus any additional costs of settlement administration). If there is less than \$750,000 remaining in the Qualified Settlement Fund as a result of voided or undeliverable checks, such funds will be distributed to the Center for Responsible Lending, a non-profit organization, subject to the Court's Final Approval Order. In the event that any redistributed funds remain unclaimed by Settlement Class members more than 180 days after such redistribution, such unclaimed funds shall be distributed to the Center for Responsible Lending.

III. Class Counsel

Co-Lead Class Counsel (the lawyers representing the Plaintiffs and the class members), consist of the following law firms:

BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103

NICHOLS KASTER, PLLP
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

In addition to the co-lead firms identified above, the following law firms also represent the Class: Stoll Berne Lokting & Shlachter P.C., Taus, Cebulash & Landau, LLP, and Shapiro Haber & Urmy LLP.

IV. Release of Claims

In exchange for the prospective and monetary relief provided by the Settlement Agreement, all Settlement Class Members who do not timely exclude themselves by opting out of the settlement, will release BANA and its employees, agents, affiliates, predecessors, parents, subsidiaries, and BANA's lender-placed flood insurance vendors including any brokers, agents, insurance providers, and providers of tracking and placement services (collectively, the "Released Parties"), from all claims actually made or that could have been made on behalf of Settlement Class Members related to the Released Parties' conduct, policies, or practices as to flood insurance. Specifically, the Settlement Agreement sets forth the Class Release as follows:

Subject to the approval of the Court and in consideration of the benefits inuring to the Named Plaintiffs and Eligible Class Members, upon the Effective Date of this Settlement, the Named Plaintiffs and each Eligible Class Member and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors,

predecessors, joint tenants, tenants in common, tenants by the entirety, co-mortgagors, co-obligors, co-debtors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims on their behalf) (collectively, the “Releasors”), shall release, resolve, relinquish, and discharge BANA and its employees, agents, affiliates, predecessors, parents, subsidiaries, and BANA’s LPFI vendors including any brokers, agents, insurance providers, and providers of tracking and placement services (“Released Parties”) from any and all claims, counterclaims, actions, causes of action, demands, obligations and liabilities, of whatever kind or character, including, without limitation, those known or unknown, that arose during the Class Period, in any way arising from or related to the Released Parties’ conduct, policies, or practices as to flood insurance that Releasors have, had, or may have had against the Released Parties; including, without limitation, any and all claims for individual money damages that were asserted or could have been asserted against Released Parties concerning BANA’s conduct, policies, or practices as to flood insurance on behalf of Releasors in the Consolidated Amended Complaint through April 4, 2014 (“Released Claims”). The Releasors further agree that they shall be enjoined by the Court as part of its Final Approval Order from instituting any action or cause of action (in law, in equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have in state or federal court, or with any state, federal or local government agency or with any administrative or advisory body, asserting the Released Claims. Nothing in this Agreement shall affect in any way a claim for coverage under any insurance policy, including any LPFI policy.

The Released Claims include, without limitation, all claims related to charges for BANA’s placement of LPFI Policies during the Class Period; BANA’s flood insurance requirements; the relationship, whether contractual or otherwise, between BANA and its employees, agents, affiliates, predecessors, parents, and subsidiaries, and BANA’s LPFI vendors including any brokers, agents, insurance providers, and providers of tracking and placement services regarding LPFI, including, but not limited to, the procuring, underwriting, placement, insurance tracking, or costs of BANA’s LPFI Policies; the coverage amount, duration, issue date, alleged “backdating,” or alleged excessiveness of any LPFI Policies placed or charged by BANA; the payment or receipt of commissions, expense reimbursements, alleged “kickbacks,” or any other compensation under any LPFI Policies placed or charged by BANA; any alleged “tying” arrangement involving BANA and LPFI; any alleged breach of fiduciary duty by BANA concerning LPFI; any alleged tortious interference by BANA and its employees, agents, affiliates, predecessors, parents, and subsidiaries, and BANA’s LPFI vendors including any brokers, agents, insurance providers, and providers of tracking and placement services with mortgage contracts serviced by BANA; the disclosure or non-disclosure of any payment, expenses, fees, charges, or feature pertaining to or under any LPFI Policies placed or charged by BANA; the receipt or non-disclosure of any benefit under any LPFI Policies placed or charged by BANA; the content, manner, or accuracy of any communications regarding the placement of any LPFI Policies by BANA; and to the regulatory approval or non-approval of any LPFI Policies, or the premium thereon, placed or charged by BANA.

If the proposed settlement is approved by the Court, a judgment will be entered by the Court following the Final Fairness Hearing that will dismiss with prejudice the Released Claims as set forth above. This release will not affect in any way any claim for coverage under any insurance policy, including any lender-placed insurance policy.

V. Your Legal Rights and Options

All Settlement Class members who do not submit a timely request to exclude themselves from the settlement will be entitled to participate in the Settlement and will be subject to the release set forth above.

If you do not wish to participate in this settlement (in which case, you will not be entitled to any benefits under the settlement and will not be bound by the release set forth above), then you must submit a written statement requesting exclusion from the settlement (“opt-out”) postmarked no later than **[INSERT DATE]**. Your written request for exclusion must contain your name, address, telephone number and email address, and be personally signed by you. No opt out request may be made on behalf of a group of Settlement Class Members. If more than one person was obligated on the loan, then the opt-out notice needs to be signed by all obligors on the loan to be valid. The opt-out request must be sent by mail to the Claims Administrator at **[INSERT ADDRESS]** and must be timely postmarked as set forth above. The postmark date of the mailing envelope shall be the exclusive means used to determine whether an opt-out has been timely submitted. Any Settlement Class Member who requests exclusion from (opts out of) the settlement will not be entitled to any settlement payment and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.

Class Counsel intends to ask the Court for an award of attorney’s fees not to exceed \$9,300,000 (30 percent of the Gross Settlement Fund), plus expenses. In addition, Class Counsel will ask for a service award not to exceed \$2,500 for each of the named Plaintiffs, as set forth in Section II.B. Although you will not be responsible for paying any fees or costs out-of-pocket, these awards, if approved, will reduce the amount you recover as a result of the class action. The fee petition will be available for viewing at **[CLASS WEBSITE]** no later than **[DEADLINE FOR FILING FEE PETITION, 30 DAYS PRIOR TO OPT-OUT DEADLINE]**.

If you wish to object to the settlement or fee petition, you must file a written statement of objection with the Court by mailing a copy to the Clerk of Court and the Claims Administrator at the following addresses, filed and postmarked no later than **[INSERT DATE]**:

[INSERT COURT ADDRESS]

ANALYTICS, LLC

[INSERT CLAIMS ADMINISTRATOR ADDRESS]

You must state the basis for your objection, as well as your name, address, telephone number, and email address, and the objection must be personally signed by you. The postmark date of the mailing envelope shall be the exclusive means used to determine whether an objection has been timely submitted. Settlement Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from seeking review or making any objection (whether by appeal or otherwise) to the settlement or the terms of the Settlement Agreement.

Subject to the approval of the Court, any Settlement Class Member who files and serves a written objection in accordance with the provisions set forth above may appear, in person or by counsel, at the Final Approval Hearing, to show cause why the proposed settlement or fee petition should not be finally approved, but only if the objecting Settlement Class Member: (i) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by **[INSERT DATE]** (“Notice of Intention to Appear”); and (ii) serves the Notice of Intention to Appear on all the parties identified below, postmarked no later than **[INSERT DATE]**:

ANALYTICS, LLC INC

[INSERT CLAIMS ADMINISTRATOR ADDRESS]

Shanon J. Carson
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103

Kai H. Richter
NICHOLS KASTER, PLLP
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Matthew G. Lindenbaum
GOODWIN PROCTER LLP
Exchange Place, 53 State Street
Boston, MA 02109

The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in this paragraph shall not be entitled to appear at the Final Approval Hearing and raise any objections.

VI. The Final Fairness Hearing

On **[INSERT DATE]**, at **[INSERT TIME]**, in Courtroom **[]** on the **[]** Floor of the United States Courthouse, 1000 Southwest Third Ave, Portland, Oregon 97204, the Court will hold a Final Fairness Hearing to determine whether to grant final approval to the proposed settlement and determine the appropriate amount of compensation to be awarded to Class Counsel, the appropriate amount of any service awards to be approved, and the appropriate amount of fees and costs to be paid to the Claims Administrator, out of the Gross Settlement Fund. You may, but are not required, to attend this hearing. You may also enter an appearance in the case through your own attorney, if you so desire.

You may review a copy of the Settlement Agreement and other documents that are pertinent to this case, including Class Counsel’s Motion for Attorneys’ Fees and Costs (when it is filed), at the settlement website, **[INSERT WEBSITE]**. You may also review a copy of the Settlement Agreement at the Clerk’s Office at the Court (1000 Southwest Third Ave, Portland, Oregon 97204).

VII. How to Obtain Additional Information

This Notice of Class Action Settlement provides a summary of the proposed Settlement Agreement. If you have any questions concerning this settlement, you should visit the settlement website, [INSERT WEBSITE]. If you have further questions after visiting the settlement website, you may call the Claims Administrator at [INSERT TOLL FREE NUMBER], or mail or email your inquiry to the Claims Administrator at the address below:

ANALYTICS, LLC

[INSERT CLAIMS ADMINISTRATOR ADDRESS AND CONTACT INFORMATION]

PLEASE DO NOT CONTACT THE COURT